IDAHO
CONSERVATION
LEAGUE

208.265.9565 • PO Box 2308, Sandpoint, ID 83864 • www.idahoconservation.org

Cheryl Probert
Forest Supervisor
Nez Perce-Clearwater National Forests
903 3rd Street
Kamiah, ID 83536

Sent via e-mail to: comments-northern-nezperce@fs.fed.us

February 12, 2018

Subject: Small NEPA Projects

Dear Supervisor Probert:

Since 1973, the Idaho Conservation League has been Idaho's voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 25,000 supporters, many of whom have a deep personal interest in protecting human health and the environment.

I am writing in response to your letter, dated January 24, 2018, requesting public comments about three different projects. ICL supports the Major Fenn Side Channel and Steep Creek Large Woody Debris Projects. Substantive comments regarding the Klondike Group Exploration Project are attached. Please be sure to mail me any environmental documents or decisions related to these projects.

Sincerely,

Brad Smith
North Idaho Director

Klondike Group Exploration

Although the 1872 Mining Law establishes a legal framework for mineral location and entry on the public lands, the Forest Service is not obligated to approve a plan of operations if the plan does not fulfill the requirements of all other applicable laws and regulations such as the Endangered Species Act (ESA), National Forest Management Act (NFMA), Federal Lands Management Policy Act (FLMPA), and any other applicable laws and regulations governing the use of National Forest System lands and the disposal of minerals.

National Environmental Policy Act (NEPA)

"A threshold question in a NEPA case is whether a proposed project will 'significantly affect' the environment, thereby triggering the requirement for an EIS [Environmental Impact Statement]." *Blue Mountains Biodiversity Project*, 161 F.3d at 1212 (citing 42 USC § 4332(2)(C)). "As a preliminary step, an agency may prepare an EA [Environmental Assessment] to decide whether the environmental impact of a proposed action is significant enough to warrant preparation of an EIS." *Id*. (citing 40 CFR § 1508.9). "The purpose of an EA is to provide the agency with sufficient evidence and analysis for determining whether to prepare an EIS or to issue a [Finding of No Significant Impact]." *Metcalf v. Daley*, 214 F.3d 1135, 1143 (9th Cir. 2000) (citing 40 CFR § 1508.9). "Because the very important decision whether to prepare an EIS is based solely on the EA, the EA is fundamental to the decision-making process." *Id*.; see also 40 CFR § 1500.1(b); *Idaho Sporting Congress*, 137 F.3d at 1151. If the preparation of an EA reveals that significant effects will in fact occur, then the Forest Service should not rule out the possibility of preparing an EIS.

Cumulative Effects

The Forest Service must disclose the combined effects of all past, present, and reasonably foreseeable future actions in the project areas. The scoping notice indicates that mining claims have existed in the general area since the 1930s, and the operator will access the site using a historic mining road. Beyond that, the document fails to detail any of the previous mining activities on the claims. A description of previous mining or exploration activities might enable the decision maker and the public to determine whether or not a prudent person would proceed with the proposed Plan of Operations.

For example, if previous exploration activities on the site failed to demonstrate that a valuable mineral deposit exists, then a prudent person would not conduct further exploration. In this example, what the claimant proposes to do is not only imprudent, but it would also be unnecessarily and unreasonably destructive to surface resources, and a surface use determination may be warranted as described in the Forest Service Handbook (see comments below).

Because the scoping notice fails to describe the nature and extent of previous mining or exploration on the claims, we highly recommend that the Forest Service rescope this project.

Appropriateness of Category 8 CE

The CE category described at 36 CFR 220.6(e)(8) has never been programmatically reviewed under NEPA as required by law. Therefore, we question the appropriateness of applying this CE category.

Orderly Steps in the Development of Mines

The Forest Service should limit the scope of a Plan of Operations to match the appropriate step in the normal development of a mine by a prudent person. The agency is not obligated to approve a proposed Plan of Operations if it does not follow the next logical step in the orderly development of a mine. The orderly steps are outlined in the Forest Service Handbook at FSH 2809.15, Sec. 11. The actions and expenditures of labor and resources by a person of ordinary prudence using industry-accepted techniques to prospect, explore, develop, produce, abandon or reclaim a valuable mineral deposit using methods, structures and equipment appropriate to the geological terrain, mineral deposit, and stage of development and reasonably related activities include:

Prospecting - the preliminary searching for outcrops or surface exposures of mineral deposits. At this earliest stage of mining activity, it is characterized by activities that result in low impact to surface resources, such as driving on existing roads, hiking or riding on trails or cross country, field and geologic reconnaissance mapping, taking small samples by hand or with small highly portable tools, stream sediment sampling, panning of placer samples or small-scale sluicing, soil sampling, claim staking, and using portable geophysical equipment.

Exploration - the second stage in the logical progression of mining activities. It usually occurs once a geologically favorable target area, with moderate to high mineral potential, is identified through prospecting, but subsurface information is still needed to determine the presence and extent of any mineral resources and whether any of this constitutes economic reserves. Its purpose is to narrow the search for a mineral resource, better define a target, and ultimately to discover a valuable mineral deposit that can be mined, removed, and marketed at a profit.

Development - the stage of mining activity that occurs once exploration drilling and other activities have identified a valuable mineral deposit (that is, ore grade and a significant reserve is established), but the dimensions of the ore deposit are not yet fully delineated (it may be "open" on several sides), and all the parameters necessary for mine design and production are not yet known or understood. The purpose of development is to delineate the ore body, establish grade and reserves with a high degree of probability so economics of the deposit can be fully evaluated, and provide the claimant/operator with information necessary to make a

decision as to when and whether to invest the often sizable capital expenditure necessary to progress to the next stage of mining activity—production.

Production - The most prevalent activities at this stage are mining, removing, and processing of previously discovered and developed ore deposit and marketing a product. The quantity and quality of the ore at this stage is known with a high level of certainty, and the operator has made a firm commitment through capital expenditures and engineering design and construction.

Abandonment and Reclamation - Reclamation should occur at all stages of mining activity where surface disturbance results. However, abandonment and final reclamation occur after production has ceased because the ore body mined out. Long-term mine closure may result from changing economics, such as declining metals prices or operating cost increases. Regardless of the cause, when production activities have ceased or significantly declined and are expected to remain so for the long term, equipment, structures, and other facilities, as they are no longer needed, should be removed.

The environmental analysis and decision document should describe why the proposed plan of operations is the next appropriate step in the orderly development of a mine. As pointed out above, prospecting is the first step in the development of a mine. Yet the scoping notice does not describe what prospecting activities the proponent has undertaken. The results of prospecting activities would help the public and the decision maker to determine whether or not exploration is a prudent next step.

The results of the proponent's prospecting activities are also helpful to understand what mineral resources the operator intends to develop. Understanding what mineral(s) the proponent intends to develop is also crucial to understanding the potential environmental impacts. Some minerals require different mining and processing techniques. While some minerals are inert, others may cause environmental pollution.

Since the scoping notice omits this key information, we highly recommend that the Forest Service rescope the project.

Value of the Deposit

We encourage the Forest Service to conduct split tests of the mineral samples. This information would be particularly helpful in the event that the proponent seeks to conduct further exploration or proceed to mine development. The Forest Service's own data could be used to either corroborate or contest the integrity of the data processed by the claimant and inform any decisions about future actions.

Surface Use Determination

If the proposed Plan of Operations is unnecessarily and unreasonably destructive to surface resources and damaging to the environment, the Forest Service should seek to modify the Plan

of Operations to minimize effects to national resources as required by 36 CFR § 228.1. When assessing whether an operation is unnecessarily and unreasonably damaging national forest resources, the Forest Service should consider:

1. Site-specific circumstances of the operation being considered and resources affected.
2. Some possible reasonable alternatives to the proposal, and their potential effects compared to the proposal.
3. Standard industry practices; that is, typical approved activities for operations that have similar geographic settings and levels of mineral resource evidence.
4. Any established best management practices for proposed use or similar uses.
5. New research and technology that may present some viable options for minimizing effects on national forest resources.

FSH 2809.15, Sec. 13.9.

Where the authorized officer is unable to agree on appropriate and reasonable modifications to the proposed Plan of Operations and mitigation with the claimant, a Surface Use Determination process should be undertaken. FSH 2809.15, Sec. 11.2. A qualified minerals examiner should prepare the surface use determination report as described in the Forest Service Handbook. FSH 2809.15, Sec. 13.

Forest Plan Compliance

The environmental analysis and decision documents should describe how the project satisfies relevant forest plan direction.

Sensitive, threatened, and endangered species

The Forest Service should prepare a biological assessment of the potential direct or indirect effects of the proposed action to all sensitive, threatened, and endangered species, including plants, fish and wildlife. Appropriate mitigation and design features should be required to avoid or minimize effects to all sensitive, threatened, and endangered species, such as limiting or restricting the timing or location of operations. Consultation should occur with the relevant state and federal agencies that are charged with managing fish and wildlife.

Groundwater and acid mine drainage

The environmental analysis should characterize the geologic formation(s) in the project area and describe their potential to react with water and air to produce acid mine drainage. Mining operations that produce acid mine drainage require wastewater treatment in perpetuity.

The environmental analysis should also characterize groundwater in the project area, including depth below ground and subsurface flow patterns. Development of a mine could result in a decline in groundwater levels and consequently, surface water flows.

Water sources

If the operator plans to withdrawal or divert water for their operations then a water right must be sought and obtained from the Idaho Department of Water Resources. This requirement applies even when water is diverted or withdrawn off-site, including outside of Forest Service administrative boundaries.

In the event that the proponent is diverting or withdrawing water for the project, on- or off-site, then the Forest Service should require proof that a water right has been obtained from the Idaho Department of Water Resources prior to approving any plan of operations, or initiating any ground-disturbing activities.

The timing and location of water withdrawal should be restricted to avoid impacts to aquatic organisms and sensitive, threatened, and endangered species. Source and quantities of water to be diverted should be described and illustrated in the environmental analysis.

Incidental trash and waste

Proper clean up of all trash, food, and human waste should be required at all times. Food and other animal attractants should be properly stored in order to avoid unwanted conflicts with wildlife and wildlife habituation.

Transportation, storage and disposal of hazardous materials and pollutants

All fuels, oils, lubricants, solvents, liquids, gases, drilling mud, etc. should be properly contained, labeled, and stored outside of riparian conservation areas. The environmental analysis should provide a list of these fluids and substances, including the amounts that will be used and stored on site at any given time.

The environmental analysis should also describe the quantities of hazardous fluids and substances that will be transported, the transportation routes that will be used, and the number of trips that will be taken. In addition, the document should describe what emergency spill and containment equipment will be required to accompany transport vehicles and crews in the event that a spill occurs. The operator must also have a plan in place to respond in the event of a leak or spill during transportation. Special provisions may be necessary considering the remoteness of the project area and the conditions of the transportation infrastructure.

Vehicular access

The operator should be required to fully reclaim any access reouts that must be constructed or reconstructed to access the site. At a minimum, all culverts should be removed and the road surface should be decompacted and revegetated. Ideally, closed roads would be fully recontoured in order to reestablish natural drainage patterns and discourage illegal off-road vehicle use. Course weedy debris should be placed across the affected area to discourage motorized access and create favorable microclimates for the reestablishment of vegetation and trees. The route should be seeded with a Forest Service approved seed mixture consisting of native seed sources. The prism should also be stocked with desirable tree seedlings. The calculation of the bond should account for these activities in the reclamation costs.

The Forest Service must also ensure that the access routes are consistent with Forest Plan standards for elk habitat security in the project area.

Noxious weeds

The operator should be required to wash and clean all equipment before entering public lands. A knowledgeable agency employee should also inspect the proponent's equipment. These management practices are necessary to limit the spread of invasive weeds and plants.

Disturbed soil should be reseeded with an approved mixture of native seed. A noxious weed monitoring and treatment program should be implemented for several years after completion of the project.

Mitigation

In addition to exploring a reasonable range of alternatives to the proposed action, regulations implanting NEPA require inclusion of "appropriate mitigation measures not already included in the proposed action or alternatives." 40 CFR § 1502.14(f). Moreover, in the final decision document, federal agencies are required to "[s]tate whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation." 40 CFR § 1505.2(c). Mitigation is defined at 40 CFR § 1508.20(a)-(e):

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.
(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
(e) Compensating for the impact by replacing or providing substitute resources or environments.

Reclamation and bonding

The environmental analysis should describe the reclamation process and all associated costs in detail. The document should also describe the process used to calculate the size of the bond. The size of the bond should be large enough to cover all reasonably foreseeable reclamation or clean up costs, including the worst-case scenario. The Forest Service or a credible, independent, third party should calculate the bond.